

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Miller gave the invocation.

**FLOOD UPDATE**

Interim Fire Chief Scott Burnette updated City Council on the recent rains. He provided them with information on the impact of the heavy rains and the City's actions. Using graphs, he explained the flooding situation of the French Broad River and the Swannanoa River.

**I. PROCLAMATIONS:**

**A. RESOLUTION NO. 09-201 - RESOLUTION NAMING THE BASEBALL/SOFTBALL COMPLEX AT VALLEY SPRINGS MIDDLE SCHOOL FOR IRBY BRINSON, FORMER DIRECTOR OF ASHEVILLE PARKS, RECREATION & CULTURAL ARTS DEPARTMENT**

Mayor Bellamy was pleased to recognize Mr. Irby Brinson, former director of the Asheville Parks, Recreation & Cultural Arts Department. Mayor Bellamy then read the resolution naming the baseball/softball complex at Valley Springs Middle School for Irby Brinson, former director of Asheville Parks, Recreation & Cultural Arts Department, in agreement with the Buncombe County's School Board's approval in January of 2007 naming the baseball/softball complex "The Irby Brinson Athletic Complex".

The baseball/softball complex is located at Valley Springs Middle School which is owned by the Buncombe County Board of Education. In June of 1992, the City and the Buncombe County School Board entered into a 30 year agreement with the Buncombe County School Board wherein the Buncombe County School Board would provide land at Valley Springs Middle School for the purpose of providing athletic fields that the City would fund, install and maintain.

Irby served in several positions in the City of Asheville Parks, Recreation & Cultural Arts Department, most recently as the director for 15 years and until his retirement in 2006. During his tenure, Irby provided leadership and dedication to the operation and delivery of parks and recreation services. He oversaw significant improvements and additions to the park, greenway and facility system; and expansion of a comprehensive recreation, cultural art and fundraising program. His most notable achievement was leading the Department to become the first municipal recreation department in the nation to be accredited under the American Academy for Park and Recreation Administration in 1994, followed by the Gold Medal Award as a department of excellence by the National Recreation and Parks Association in 2002.

The Recreation Board unanimously approved the naming of the baseball/softball complex at Valley Springs Middle School in honor of Irby Brinson at its regular meeting in November 2006. The Buncombe County School Board approved the naming of the baseball/softball complex "The Irby Brinson Athletic Complex" at its regular meeting in January 2007.

Pros:

- Recognize a long-time public servant for his considerable contributions to Asheville in providing parks, facilities and recreation services for all citizens and visitors of Asheville.

Con:

- None

The Recreation Board recommends City Council approve the naming of the baseball/softball complex at Valley Springs

Middle School for Irby Brinson, in agreement with the Buncombe County's School Board's approval in January of 2007 naming the baseball/softball complex "The Irby Brinson Athletic Complex".

Mr. Brinson thanked City Council for their support, his family for their understanding, and the thousands of volunteers who worked with him during his service with the City.

When Mayor Bellamy asked for public comment, none were received.

With a standing ovation, Councilman Mumpower moved to adopt Resolution No. 09-201. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**RESOLUTION BOOK NO. 32 – PAGE 216**

**B. RECOGNITION OF GROVE PARK INN SPONSORSHIP DONATION FOR THE 2009 SEASONAL SIZZLE AT SEVEN**

**ORDINANCE NO. 3785 - BUDGET AMENDMENT FROM THE GROVE PARK INN FOR THE 2009 SEASONAL SIZZLE AT SEVEN**

On behalf of the City of Asheville, Mayor Bellamy thanked the Grove Park Inn and Spa for their support again this year for the Seasonal Sizzle at Seven. The City is pleased to have the support of an organization like the Grove Park Inn and Spa and all of us look forward to working with them again this year.

Mr. Ron Morin, Grove Park Inn and Spa Executive Director of Operations, presented the City with a check for \$40,000 to fully fund the event. The Sizzle was started last year by the Grove Park Inn and Spa with support from the City to bring people to Downtown Asheville to eat in our great restaurants, to shop in the wonderful stores, and in the end help to support the local economy during the holiday season. This year, Downtown Asheville will be filled with fireworks on during the first three Saturday's in December (December 5, 12, and 19) at 7:00 pm.

Summary: The consideration of a budget amendment, in the amount of \$40,000, for a sponsorship donation from the Grove Park Inn Resort and Spa for the 2009 Seasonal Sizzle at Seven.

The Grove Park Inn is donating \$40,000 to the City of Asheville to fund the 2009 Seasonal Sizzle at Seven. The 2009 Seasonal Sizzle at Seven is a fireworks show that will take place on Saturday, December 5, 12, and 19 at 7:00 pm in downtown Asheville.

The Seasonal Sizzle at Seven was started in December 2008 as a way to bring people to downtown Asheville to eat in the restaurants and shop in the stores. Local area restaurants and shops will be offering discounts and specials on the evenings of the event.

The funding will fully support the cost of the fireworks and related administrative costs, permit fees, police support, public works support, program enhancements, and marketing.

The City of Asheville will create a stronger, more prosperous community with smart investments that accomplish real, lasting, tangible returns.

Pros:

- Provide full funding for the cost of the event.
- Managed by the City of Asheville Parks, Recreation and Cultural Arts Department.

Con:

- None

The budget amendment will increase the operating budget in the Parks, Recreation and Cultural Arts Department in the Cultural Arts Division for contracted services by \$40,000 to fund the Seasonal Sizzle at Seven in December 2009.

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City staff recommends City Council to authorize the City Manager to increase the budget for funds received from the Grove Park Inn in the amount of \$40,000 to fund the 2009 Seasonal Sizzle at Seven in downtown Asheville.

When Mayor Bellamy asked for public comment, none were received.

Mayor Bellamy said that members of Council have previously been furnished a copy of the ordinance and it would not be read.

Councilman Mumpower moved to adopt Ordinance No. 3785. This motion was seconded by Councilman Miller and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

**C. PROCLAMATION PROCLAIMING SEPTEMBER 28, 2009, AS "FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN"**

Mayor Bellamy proclaimed September 28, 2009, as "Family Day – A Day to Eat Dinner with your Children" in the City of Asheville.

**D. PROCLAMATION PROCLAIMING OCTOBER, 2009, AS "FIRE PREVENTION MONTH"**

Vic-Mayor Davis read the proclamation proclaiming October, 2009, as "Fire Prevention Month" in the City of Asheville. He presented the proclamation to Interim Fire Chief Scott Burnett, who briefed City Council on some activities taking place during the month.

**E. PROCLAMATION PROCLAIMING OCTOBER, 2009, AS "CRIME PREVENTION MONTH"**

Councilman Newman read the proclamation proclaiming October, 2009, as "Crime Prevention Month" in the City of Asheville. He presented the proclamation to Master Police Officer Allen Dunlap, who briefed City Council on some activities taking place during the month.

**F. PROCLAMATION PROCLAIMING OCTOBER 4-11, 2009, AS "MENTAL ILLNESS AWARENESS WEEK"**

Mayor Bellamy read the proclamation proclaiming October 4-11, 2009, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Mr. Jim Pitts, President of the National Alliance on Mental Illness North Carolina, and Ms. Christine Smith, Co-President, who briefed City Council on some activities taking place during the week.

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Items "C", "F", "G" and "K" were removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 8, 2009**

**B. RESOLUTION NO. 09-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER TARGET COMMUNITY RELATIONS PROGRAM**

**ORDINANCE NO. 3786 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER TARGET COMMUNITY RELATIONS PROGRAM**

Summary: The consideration of (1) a resolution authorizing the City to accept funds for a TARGET Grant, and (2) the accompanying budget amendment, in the amount of \$1,000.

The Asheville Police Department (APD) has been awarded a TARGET grant for 2009, in the amount of \$1,000. These funds are to be used for the enhancement of the APD Explorer post through the purchase of uniforms and equipment.

In 2008 APD re-instituted our youth Explorer Program. This program is geared toward involving youth in a hands-on interactive learning about the APD. This program not only educates youth but also instills responsibility by challenging youth to earn supervisory promotions within the unit. Part of this program involves practical training in Law Enforcement skills such as radio communications, traffic stops, traffic directions, etc. Additionally our Explorers are able to compete in Explorer competitions to

display the skills they have learned – which includes best dress uniform.

This non-match 100% TARGET grant will aid the APD in furthering our program in the purchase of dress uniforms for our Explorer Post.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing youth awareness and involvement with APD
- Expanding our positive reach into the communities we serve through youth and their families/friends
- Utilize Explorers to assist APD in special events for traffic control/direction or similar activities

Con:

- None.

There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept grant funds from TARGET; and (2) the associated budget amendment, in the amount of \$1,000.

**RESOLUTION BOOK NO. 32 – PAGE 217**

**ORDINANCE BOOK NO. 25 – PAGE**

**C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT**

**BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT**

These items were removed from the Consent Agenda for discussion and/or an individual vote.

**D. RESOLUTION NO. 09-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE RECEIPT, RELEASE AND REFUNDING AGREEMENT TO ACCEPT FUNDS ACCORDING TO THE WILL OF NELL G. BADGETT**

**ORDINANCE NO. 3788 - BUDGET AMENDMENT FROM THE BADGETT ESTATE FOR THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of (1) a resolution authorizing the City Manager to sign the Receipt, Release and Refunding Agreement with the Badgett Estate to accept funds according to the will of Nell G. Badgett; and (2) the associated budget amendment, in the amount of \$5,000.

The Asheville Police Department (APD) has received funds according to the will of Nell G. Badgett in the amount of \$5,000. These funds are to be used by the APD as needed. The APD has requested that these funds be applied to the APD Community Policing line for the Annual Awards Banquet as a means to honor our employees, citizens and the generosity of Nell Badgett. As condition upon receiving the funds the estate has requested that the agreement be signed indicating that the funds will be transferred to the APD.

This action complies with City Council's Strategic Operating Plan in the Focus Areas – Fiscal Responsibility and Safe.

Pros:

- Acceptance of gift from the Estate of Nell Badgett
- Furtherance of APD Annual Awards Program to recognize employees and citizens in enhancing our community

Con:

- None.

There is no fiscal impact at this time for City Council to approve the resolution accepting funds.

City staff recommends City Council authorize the City Manager to sign the Receipt, Release and Refunding Agreement with the Badgett Estate; and to adopt the associated budget amendment, in the amount of \$5,000.

**RESOLUTION BOOK NO. 32 – PAGE 219**

**ORDINANCE BOOK NO. 25 – PAGE**

**E. ORDINANCE NO. 3789 - BUDGET AMENDMENT TO TRANSFER FUNDS FROM THE CAPITAL RESERVE FUND TO COVER CLOSING COSTS INCURRED DURING THE PURCHASE OF LAND FOR A FIRE STATION OFF OF SAND HILL ROAD**

Summary: The consideration of a budget amendment transferring \$3,566 from the capital reserve fund to cover closing costs incurred during the purchase of land for a fire station off of Sand Hill Road.

Asheville City Council budgeted \$250,000 in the Fiscal Year 2006-07 capital improvement budget for the purchase of land off of Sand Hill Road for the purpose of locating a future fire station. During the land purchase closing, additional expense was incurred to conduct an environmental site survey as well as attorney's closing costs. This additional expense will require transferring \$3,566 from the capital reserve fund to this project.

This action complies with the Strategic Operating Plan by ensuring financial accountability by matching resources with strategic initiatives.

Pros:

- This budget amendment allows for financial accountability in moving the total funds needed for this project into the project account to reflect the total amount spent for this purchase.

Con:

- Reduces the capital reserve fund by \$3,566.

- There is currently \$180,000 available in the City's capital reserve fund. This amendment will reduce that amount to \$176,434.

City staff recommends that City Council approve this budget amendment to transfer \$3,566 into this project.

**F. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF MARTIN LUTHER KING JR. DRIVE**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**G. RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION TO PROVIDE RESTORATION AND REPAIR SERVICES FOR THE WALL STREET AND RANKIN AVENUE PARKING GARAGES**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**H. RESOLUTION NO. 09-207 - RESOLUTION APPOINTING MEMBERS TO THE AMERICANS WITH DISABILITIES ACT COMPLIANCE COMMITTEE**

Summary: The terms of Bonnie Love (representative from the business or non-profit sector) and Carol Ann Pothier (representative from the education and the health/medical profession) expired on August 22, 2009.

On September 8, 2009, it was the consensus of Council to appoint Julie Fulwood (representative from business or non-profit sector) and Teresa Foster-Moorefield (representative from the education and the health/medical profession) to each serve a three-year term respectively, terms to expire August 22, 2012, or until their successors have been appointed.

**RESOLUTION BOOK NO. 32 – PAGE 223**

**I. RESOLUTION NO. 09-208 - RESOLUTION EXTENDING THE TERMS OF MEMBERS TO THE PLANNING &**

## ZONING COMMISSION

Summary: The terms of Tom Byers and Steve Sizemore expired on August 14, 2009.

At the Planning & Zoning Commission meeting on August 20, 2009, the Commission unanimously recommended that City Council consider extending the terms of Mr. Byers and Mr. Sizemore until the final review of the Stormwater & Erosion Control Ordinance has been adopted.

On September 8, 2009, it was the consensus of Council to extend the terms of Steve Sizemore and Tom Byers for an additional six months, term to expire February 14, 2010, or until the stormwater and erosion control ordinance has been adopted by City Council, whichever occurs earlier.

### RESOLUTION BOOK NO. 32 – PAGE 224

#### J. RESOLUTION NO. 09-209 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH WILLIAM S. HARRISON JR. AND CHARLOTTE DE. HARRISON LIVING TRUST FOR REAL PROPERTY LOCATED OFF OF EAGLE STREET

Summary: The consideration of a resolution authorizing the Mayor to execute a Lease Agreement between the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust and the City of Asheville for real property located off of Eagle Street.

The subject property off of Eagle Street, identified as PIN # 9649-50-1164-00000, is owned by the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust and has been utilized by the City for several years as secured parking for police vehicles and outdoor storage. This surface parking lot has a total of 35 parking spaces and is secured by a chain link fence.

The proposed term for this lease is five years, at a rental rate beginning at \$1707.00 with annual increases of 3.5%. The City will also be responsible for paying related tenant expenses, including property tax, storm water bills and upkeep. Staff has performed analysis of monthly parking rates in downtown, and found this price point to be consistent with those numbers.

The opportunity to obtain secured parking that is directly adjacent to the City Municipal Building allows the Police Department to park vehicles and utilize outdoor storage that, in turn, supports efforts to improve public safety in downtown.

Pros:

- Optimum location for downtown city vehicle and police parking
- Secured area with fencing

Con:

- None

The fiscal impact will be as follows: (1) Fiscal Year 2010: \$20,484 expenditure each year, plus \$7,829.25 for property taxes and stormwater; and (2) Beyond Fiscal Year 2010: Additional expenditure to include the base rate of \$20,484 per year plus 3.5% escalation per year.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute the lease agreement with the William S. Harrison, Jr. and Charlotte D. Harrison Living Trust on behalf of the City of Asheville.

Mayor Bellamy recognized Mr. Tim Harrison and thanked him for leasing the parking lot property to the City of Asheville for many years.

### RESOLUTION BOOK NO. 32 – PAGE 225

#### K. RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A PRIVATE EVENT IN THE PACK SQUARE AREA OF PACK SQUARE PARK FOR WINDOWS ON THE PARK ON OCTOBER 9, 2009

This item was removed from the Consent Agenda for discussion and/or an individual vote.

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

Vice-Mayor Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

**ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**C. RESOLUTION NO. 09-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT**

**ORDINANCE NO. 3787 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS UNDER THE N.C. OFFICE OF JUSTICE PROGRAMS OF THE U.S. DEPT. OF JUSTICE FOR THE 2009 EDWARD BYRNE ASSISTANCE GRANT**

Summary: The consideration of (1) a resolution authorizing the City to accept funds for the 2009 Byrne Justice Assistance Grant – Local Solicitation and (2) the accompanying budget amendment, in the amount of \$90,560.

The Asheville Police Department has been awarded the Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation. This is a predetermined amount of funds based on the Part 1 Uniform Crime Reporting Crimes. The Asheville Police Department (APD) and Buncombe County Sheriff's Department have been allocated \$90,560 with Asheville receiving \$64,516 and Buncombe County receiving \$26,044. The distribution of funds has been approved through a signed Memorandum of Understanding.

The APD plans to purchase in-car video systems to place in patrol cars. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens. The digital cameras provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure evidentiary storage and wireless upload capabilities of the system create a user friendly system that is extremely secure and versatile.

The Buncombe County Sheriff's Department plans to purchase enhanced laser rifle sights and rifle simulator training equipment. Through the purchase of these items the department seeks to improve the confidence, skills and abilities of deputies responding to active shooter situations. These items will serve to enhance a program which already issues rifles to deputies who perform enforcement actions.

There will be an expense of \$64,516 by the APD for the in-car video system. The Buncombe County Sheriff's Department will expend \$26,044 for the purchase of enhanced rifles sights (laser) and rifle simunition training equipment. This accounts for the total allocation of \$90,560 for this Grant.

This is a 100% non-matching grant that will enable the APD to greatly improve the Municipal Building Security and improve the processing of fingerprints and palm prints to compare to those compiled locally.

This action complies with City Council's Strategic Operating Plan in the Focus Area - Safe - Asheville will be one of the safest and most secure communities when compared to similar cities.

Pros:

- Increasing In-Car video will allow for better documentation of police related incidents.
- Increases officer and citizen accountability through recorded interactions.

Con:

- None.

There will be maintenance and replacement costs for the equipment that will need to be included in future fiscal year budgets.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to accept grant funds through US Office of Justice Programs; and (2) the associated budget amendment, in the amount of \$90,560.

Councilman Mumpower was troubled with the dysfunctional court system and felt that the state should use those funds for that purpose and let the City use it's own funds to fund the equipment.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-203. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION BOOK NO. 32 – PAGE 218**

Vice-Mayor Davis moved for the adoption of Ordinance No. 3787. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**ORDINANCE BOOK NO. 25 - PAGE**

**F. RESOLUTION NO. 09-205 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE PROPERTY OFF MARTIN LUTHER KING JR. DRIVE**

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase property off of Martin Luther King Jr. Drive.

A bid has been received from Simon Western Properties, LLC in the amount of \$115,000 for the purchase of land off of Martin Luther King Jr. Drive (PIN # 9648-58-8911-00000).

The land off of Martin Luther King Jr. Drive was acquired by the City as part of the East End/Valley Street Community Improvement Program. It is a sloping to steep parcel measuring approximately 0.67 acre±. The parcel has frontage on Martin Luther King Jr. Drive and is appropriate for sale as a residential lot with current zoning RM8. The bid from Simon Western Properties LLC is in the amount of \$115,000. We have an appraisal on file prepared by Dry Ridge Appraisal Service, LLC dated August 28, 2009 that estimates the fair market value of the property to be at \$115,000. The current bid is equal to the appraised fair market value.

This action complies with the strategic operating plan in that income from the sale of this property will directly benefit the CDBG Program, thus providing funding towards affordable housing.

Pros:

- The sale will be at fair market value as established by the upset bid process.
- It will return property not needed for public use to the tax rolls.
- It will transfer responsibility for maintenance to the private sector.

Con:

- There is no negative impact.

The proceeds from the sale of this parcel will be CDBG Program Income.

Economic Development staff recommends City Council approve a resolution authorizing the City Clerk to advertise an offer to purchase property off of Martin Luther King Jr. Drive.

Upon inquiry of Councilman Mumpower, Real Estate Manager Nikki Reid said that this property was transferred to the City via the Housing Authority and therefore those funds must be circulated back into CDBG fund.

In response to Councilwoman Cape, Economic Development Director Sam Powers said that any possible linkages associated with this property will be reviewed by the Greenway Commission prior to it being brought back for Council final consideration.

Councilman Newman moved for the adoption of Resolution No. 09-205. This motion was seconded by Councilman Russell and carried unanimously.

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**G. RESOLUTION NO. 09-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION TO PROVIDE RESTORATION AND REPAIR SERVICES FOR**



## THE WALL STREET AND RANKIN AVENUE PARKING GARAGES

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with Perry Bartsch Jr., Construction to provide restoration and repair services for the Wall Street and Rankin Avenue parking garages.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center garage was built in 1976 and the others were built in 1988. Like any structure, these parking garages deteriorate over time and require restorative maintenance and repairs. This type of work normally consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs. The City of Asheville began a multi-year program to accomplish restoration of all three garages in 2007. The restoration work was completed in the Civic Center garage in 2008. City staff recommended, and Council approved, including restoration work on the Wall Street and Rankin Avenue garages in the Capital Improvement Plan for Fiscal Year 2008-09.

During spring of 2009 an engineering firm retained by the City did an assessment of the condition of the Wall Street and Rankin Avenue garages. While they are generally in good repair some moderate restoration and repair work is required in both garages. Requests for bids were sent out and twelve firms responded. The bids were publicly opened on August 18, 2009. The bids ranged from \$907,048.64 to \$342,921.49. Perry Bartsch Jr. Construction, Asheville, N.C., was the apparent low bidder at \$342,921.49. In coordination with an engineering firm retained by the City and an internal review committee consisting of the Interim Transportation Director, Minority Business Outreach Coordinator, and the Parking Services Manager, Perry Bartsch Jr. Construction was determined to be the lowest responsive bidder. Staff is requesting authorization for the City Manager to sign a contract with Perry Bartsch Jr. Construction for an amount not to exceed \$377,000.00; \$342,921.49 for the contract and \$34,078.51 for contingencies. These funds are currently budgeted and do not require further budget action.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

### Pros:

- Combining the restoration and repair services for both the Rankin Avenue and Wall Street garages significantly reduces the overall cost of the project compared to being accomplished as separate projects.
- Making moderate restoration and repairs now will minimize and/or prevent more costly repairs later and will extend the useful life of the parking garages.

### Cons:

- Accomplishing the work on both garages at the same time can be administratively cumbersome but it is not insurmountable.
- Minor customer disruptions may be encountered but should be minimized by performing the work during the slowest part of the year.

Funding was previously approved in the Fiscal Year 2008-09 Capital Improvement Plan.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a contract with Perry Bartsch Jr. Construction in an amount not to exceed \$377,000.00 for repair and restoration services to the Wall Street and Rankin Avenue parking garages.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects.

Councilwoman Cape suggested concrete staining in parking garage stairways to make them more inviting.

In response to Councilman Miller, Interim Transportation Director Ken Putnam said that working on both garages at the same time will save the City money on the overall work, but they will still look at options to minimize customer disruptions.

Councilman Newman moved for the adoption of Resolution No. 09-203. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

## RESOLUTION BOOK NO. 32 – PAGE 221

- K. RESOLUTION NO. 09-210 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT A PRIVATE EVENT IN THE PACK SQUARE AREA OF PACK SQUARE PARK FOR WINDOWS ON THE PARK ON OCTOBER 9, 2009**

- Summary: The consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at a private event on the grass area in the Pack Square area of Pack Square Park on October 9, 2009.

Those Girl, LLC has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the grass area of the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building.

Those Girls, LLC have requested a temporary extension of their ABC permit (premise 0016753AJ) from the North Carolina Alcoholic Beverage Control Commission (NCABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the event organizers receipt of the temporary extension from NCABC and an Outdoor Special Event permit from the City of Asheville.

This action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None.

Cons:

- Potential for public safety issues;
- The event is not open to the public.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine for a private event on the grass area in the Pack Square area of Pack Square Park on October 9, 2009, for Those Girls, LLC.

- Councilwoman Cape moved for the adoption of Resolution No. 09-210. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

#### **RESOLUTION BOOK NO. 32 – PAGE 226**

### **III. PRESENTATIONS & REPORTS:**

#### **A. ECONOMIC STIMULUS PACKAGE UPDATE**

#### **RESOLUTION NO. 09-211 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR THE LOCAL ENERGY ASSURANCE INITIATIVE GRANT APPLICATION AND AUTHORIZATION TO ACCEPT AND EXECUTE SAID GRANT WITH THE LAND-OF-SKY REGIONAL COUNCIL TO DEVELOP A REGIONAL STRATEGIC FUEL PLAN**

American Recovery & Reinvestment Project Manager Brenda Mills said that staff is seeking City Council authorization to apply as the fiscal agent for a grant opportunity through the Local Energy Assurance (LEAP) Initiative for a project that will be implemented by the Land-of-Sky Regional Council to create a Regional Strategic Fuel Plan.

The communities of Western North Carolina share a reliance on outside sources of fuel. In the last five years, the region has experienced fuel shortages, nearly running out of fuel on two occasions. These crises have occurred due to limitations in the fuel infrastructure provided to the region through the Colonial Pipeline. Tropical storms hitting the gulf coast have exposed our vulnerability. While these variables cannot be controlled locally, the region can work together to plan and implement strategies that limit future exposure to fuel shortages.

After the fuel shortage in 2008, Land-of-Sky Regional Council was asked to take advantage of its position as an intergovernmental agency with established partnerships with the region's five county governments and 17 municipal governments to aid in the fuel planning process. Preliminary work occurred in January. In response to NC League of Municipalities Emergency Fuel Use Survey conducted in the fall of 2008, the Land-of-Sky Regional Council hosted a meeting to address the most recent regional fuel shortage. The survey showed that over two thirds of the local governments expressed interest in a regional collaboration to mitigate the effect of future fuel shortages.

The governments all wanted to ensure that emergency services would be able to continue to offer fire protection, ambulance service, and police protection. They hoped a plan could be developed for better communication between municipalities to ensure continuation of services, and they were willing to work together as a region to establish conservation in times of crisis, levels of fuel alters, and other specific details.

A goal of the American Recovery and Reinvestment Act, in part, is to “facilitate recovery from disruptions to the energy supply” and “enhance reliability and quicker repair of outages.” The “Local Energy Assurance Planning” (LEAP Initiative) focuses on developing new, or refining existing, plans to integrate new energy portfolios (renewables, biofuels, etc.) and new applications, such as SMART Grid technology, into energy assurance and emergency preparedness plans. The initiative will focus on building local energy assurance capability to allow cities to better coordinate and communicate state-wide, regionally and with one another, on energy security and reliability and related emergency response issues.

Land-of-Sky Regional Council has developed partnerships with municipal and county governments to apply for \$210,000 through the LEAP Initiative. The grant will fund the creation of the Regional Strategic Fuel Plan including a regional emergency energy plan, a long-range alternative fuel plan, and local government training curricula focused on fuel emergencies and alternative technologies. The planning initiative will also involve local fuel suppliers, the bio-diesel industry, and representatives from the propane and compressed natural gas industries. The scope of work required to develop the plan will include:

- Analyzing the current fuel infrastructure and assess fuel use;
- Creating a regional emergency fuel plan to unify the energy plans in the five county region;
- Assisting governments without emergency fuel plans in developing a plan;
- Developing a plan to mitigate energy supply disruptions, and
- Establishing a long range plan that incorporated local bio-fuels, electric vehicles, propane, and compressed natural gas to reduce the reliance upon traditional vehicle fuels.

LEAP encourages regional participation and requires a city to be the grant applicant. For this reason, as the largest city in the region, the Land-of-Sky Regional Council has requested that the City of Asheville be the grant applicant and fiscal agent for the grant. The Land-of-Sky Regional Council would manage implementation of the project.

The grant request will be used directly to fund staff to: collect data on fuel storage and use, to analyze and review existing emergency fuel plans, to conduct training on developing emergency fuel plans, to develop a regional emergency fuel plan which unify the emergency fuel plans in the region, and to create a long range plan to assist in the development of a fuel plan that focuses on non-traditional vehicle fuels.

Pros:

- The Regional Strategic Fuel plan will enable the region to better endure a fuel shortage without breaks in vital services such as law enforcement, volunteer and municipal fire protection, and other emergency services.
- The LEAP grant if funded, will give the region the tools to better manage future fuel crisis and mitigate the reliance on fuel from a single source for a more energy independent future.
- Creation of more current or up-to-date energy assurance plans.

Con:

- The City of Asheville will be bear responsibilities as the fiscal agent of the grant for a regional project. This will include ARRA reporting requirements.

- This is a 100% non-matching grant.

Staff recommends the adoption of a resolution to apply for the Local Energy Assurance (LEAP) Initiative grant and to allow for the management and implementation of the grant through the Land of Sky Regional Council. Staff also recommends that Council direct staff to develop a Memorandum of Agreement with Land-of-Sky Regional Council to outline role and responsibilities for implementing the project.

In response to Councilwoman Cape, Mr. Keith Bamberger, from the Land of Sky Regional Council, said that they are allowed to use a certain amount of those funds to address programming, specifically for ARRA reporting, and in their detailed budget they do have the City receiving funds to do part of that reporting.

Councilman Mumpower spoke against the City's participation in the economy recovery stimulus package in that the program is based on borrowed dollars that will have to be repaid by our children and grandchildren. He felt there are other creative ways, like an action committee, to achieve the same conclusion.

Vice-Mayor Davis said this item was thoroughly discussed at the Metropolitan Planning Organization meeting and they concluded that there are many small communities who do not have the staff or resources to participate in the committee that Mayor Bellamy arranged last year during the fuel crisis.

Mayor Bellamy said that when there was no gas for our community last year there was an outcry from our community for this not to happen again in the future. She felt this is a step in the right direction to get us in the planning mode and to take care of our citizens in case of an emergency.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-211. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

#### **RESOLUTION BOOK NO. 32 – PAGE 229**

#### **IV. PUBLIC HEARINGS:**

##### **A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS FLYNN CHRISTIAN HOME LOCATED AT 141 COURTLAND AVENUE TO SUBDIVIDE THE PARCEL CREATING A SMALLER PARCEL FOR THE EXISTING USE**

##### **ORDINANCE NO. 3790 - ORDINANCE GRANTING AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS FLYNN CHRISTIAN HOME LOCATED AT 141 COURTLAND AVENUE TO SUBDIVIDE THE PARCEL CREATING A SMALLER PARCEL FOR THE EXISTING USE**

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:58 p.m.

Mayor Bellamy, Vice-Mayor Davis and Councilman Newman disclosed that they were on Council when the Conditional Use Permit was approved and Vice-Mayor Davis also spoke to neighbors after that approval. They would, however, consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

Assistant Planning & Development Director Shannon Tuch entered into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Tuch said that this is the consideration of an amendment to a conditional use permit for the project identified as Flynn Christian Home located at 141 Courtland Avenue in order to subdivide the parcel, creating a small parcel for the existing use.

She said that the original Conditional Use Permit was issued in March 2004. Not too long after the group home was constructed and occupied, the original owners, the Flynn Christian Home, sold the property and all assets to ABCCM who, in turn, leased the group home to Next Steps for Recovery who maintained the approved group home use for the last several years.

The current owners, ABCCM, wish to subdivide the 3.69 acre tract and sell the larger 2.63 acre tract to Next Steps while retaining the smaller tract, which would be a little over 1 acre. The property line would follow the approximate center line of the

existing natural drainage (Aerial Map – Attachment to City Exhibit 3). Tract A is proposed to contain the entirety of the existing group home development along Courtland Avenue and would consist of 2.63 acres that supports the three separate structures. Tract B, facing Houston Street, would consist of 1.06 acres and is proposed to remain vacant (Site Plan – Attachment to City Exhibit 3).

- The current owners, Asheville-Buncombe Community Christian Ministry (ABCCM), wish to subdivide the existing 3.69 acre tract to allow for the sale of the majority of the tract to their current tenants Next Steps to Recovery who intend to continue the operation of the existing group home facility. No immediate plans for development are proposed for the remaining tract of land although the proposed subdivision, if approved, would create a conforming lot that would support a variety of uses allowed in the RS-8 zoning district. This request does include the removal of the newly created lot from the Conditional Use Permit Master Plan to allow future development to proceed without public review. All residents within 200 feet of the property boundary were notified for both the Technical Review Committee (TRC) meeting and the City Council hearing. Approximately six individuals called to inquire about the notification prior to the TRC meeting but generally seemed satisfied upon learning the extent of the proposal – there were no members of the public in attendance at the TRC meeting.

In 2004, the Conditional Use Permit Master Plan included the entire lot and specifically identified the natural drainage area as an effective buffer between any activity on the subject property and the adjacent single family neighborhood on Houston Street. Consequently, any changes to the site plan including a simple subdivision, would necessitate an amendment to the existing Conditional Use Permit (CUP) and site plan.

Although no new development is proposed at this time, because a subdivision is a type of land division for the purpose of sale or development, it was necessary to bring this before Council for consideration.

If approved, the resulting lot would be a conforming lot and could be further subdivided for a variety of purposes, the most common of which is single family development since the property is zoned RS-8.

The proposal is to remove the new smaller tract from the Master Plan; however, if there is concern over potential future development on the new tract (which can include other non-residential uses normally allowed in a residential district), the approval could be conditioned to allow the subdivision but retain the two lots within the approved Master Plan which would require additional notification and Council consideration if or when new development is proposed. It could also be conditioned to require that anything other than single family development be required to return for new consideration.

This project was approved with conditions by the TRC on August 17, 2009. No members of the community expressed opposition to the proposed subdivision.

- City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**

*The project will meet State building code requirements and has been reviewed by the Technical Review Committee to ensure compliance with technical and safety requirements. No new development is being proposed at this time; however, any subsequent development proposals on the group home property would require a detailed review by both the TRC and City Council while any new development proposals for the subdivided tract would require compliance with basic technical standards.*

**2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

*At this time, no development is being proposed; however, the proposed subdivision would create a conforming lot that could support up to eight separate single family home lots or other uses allowed in the RS-8 zoning district with adequate access. It is worth noting that the existing topography and other site constraints may limit density to a number lower than what can theoretically be supported by the acreage and existing frontage. Single family development would be reasonably compatible with natural features of the site and typical of much development in the Montford neighborhood.*

**3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**

*As previously noted, no development is proposed at this time; however, development typically found in the RS-8 zoning districts would not be expected to adversely impact the value of adjacent property.*

4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**

*As previously noted, no development is proposed at this time; however, development typically found in the RS-8 zoning districts should be harmonious with the scale, bulk, coverage, density and character of the neighborhood in which it is located.*

5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**

*This proposal supports the **Asheville City Development Plan 2025** smart growth goal of infill development by allowing a subdivision of a large urban parcel for the purpose of sale or development. Additionally, this proposal will provide an opportunity for compatible residential development in an underdeveloped portion of an established neighborhood which supports one of the City Council's Strategic Operating Plan priorities of sustainability.*

6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**

*The proposed development is located near transportation facilities and other utilities appear adequate. The project area is located within walking distance of downtown, near major road facilities, interstate connections and very near the bus line that serves Montford with bus stops nearby. Preliminary review by other utility providers has not revealed any problems for serving future development in this area.*

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**

*No development is proposed at this time that would affect traffic congestion. Nevertheless, preliminary review of potential future development has not identified any potential problems with traffic congestion or hazards.*

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- Provides the opportunity for future infill development in an underdeveloped part of the neighborhood.
- Removing the newly created lot from the CUP Master Plan would facilitate future development.

Cons:

- Would remove the newly created lot from the Conditional Use Permit Master Plan – future development would not be required to gain approval from the City Council and adjacent property owners would not be notified or provided opportunity for public input.
- Maximizing development opportunities on the property where extreme topography and other site constraints exist could result in heavy impacts to the site.

Staff recommends approval of the proposed subdivision.

All residents within 200 feet of the property boundary were notified for both the TRC meeting and the City Council hearing. Approximately six individuals called to inquire about the proposal but generally seemed satisfied upon learning the extent of the proposal.

Should the community express concern over potential future development, Council may modify the proposal to retain the inclusion of the newly created lot in the original CUP Master Plan so that the compatibility of any future development could be insured through a public notification and review process.

When no one from the public spoke, Mayor Bellamy closed the public hearing at 6:05 p.m.

Councilman Mumpower spoke against this action in that he recalled when the matter originally came before Council they struggled to create a plan that protected the neighborhood. He now felt Council is stepping away from that assurance.

Ms. Tuch briefed Councilwoman Cape in the original CUP approval and why the original Master Plan was not completed.

Councilwoman Cape was interested in what other uses were allowed in the RS-8 District, other than residential, and read the uses from the Code of Ordinances.

There was a brief discussion, initiated by Vice-Mayor Davis, about the distinction of a group home vs. a family care home.

She said that all group homes in residential districts are required a CUP and those are not too difficult to monitor. We do have a number of group homes; however, that are grandfathered and it is much more difficult to monitor those because we don't have the same information available. Regarding family care homes, staff is trying to better monitor those and to make sure they comply with all applicable standards.

In response to Mayor Bellamy, Ms. Tuch said that should the amendment for changes to the family care home standards be adopted by Council later during the meeting, then a family care home would not be possible anywhere on that property because part of that amendment includes a 600 feet separation requirement between family care homes and group homes. Because we have the presence of both a family care home and a group home within that 600 feet separation that is being proposed, it would not be possible to add another one.

Mayor Bellamy said that in the past there have been illegal activities in this area because there are no people there to keep an eye on that part of the community. Allowing single-family development homes will help alleviate that concern and will also help to slow traffic down.

Councilman Newman moved for the adoption of Ordinance No. 3790, granting an amendment to a conditional use permit to allow for the subdivision of land into two parcels (subject to the conditions recommend by City staff), with the condition that the two lots remain within the approved Master Plan and anything other than single family development on the smaller 1.06 acre RS-8 parcel be required to return to Council for new consideration. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 - PAGE**

#### **B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE**

##### **ORDINANCE NO. 3791 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (SITE COMPLIANCE REQUIREMENTS: BUILDING RENOVATION COSTS AND PARTIAL PARKING LOT IMPROVEMENTS)**

##### **ORDINANCE NO. 3792 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (TEMPORARY USES AND STRUCTURES)**

Ms. Kim Hamel, Technical Review Manager, said that this is the consideration of ordinances amending the Unified Development Ordinance (UDO) to respond to the current economic climate. This public hearing was advertised on September 11 and 18, 2009.

Mayor Bellamy opened the public hearing at 6:24 p.m.

This proposed set of amendments is designed to promote economic growth for businesses and smaller economic endeavors while ensuring that city adopted goals and policies are maintained and preserved.

At the beginning of the year staff began evaluating the UDO to identify development processes, standards and compliance issues that could be amended to encourage and foster economic development opportunities. To date, the Planning and Zoning Commission and City Council have supported and approved more than 15 amendments to the UDO. In addition, staff was encouraged to continue identifying potential code amendments that would further assist in providing economic relief without sacrificing standards of quality development that are important to the citizens of Asheville. Prior to each formal recommendation, the staff has held meetings with neighborhood representatives, members of the business community and other stakeholders to ensure that each party's concerns are taken into consideration in drafting the proposals.

The current proposals are based upon comments received at the Developers Forum Meeting in May and from various community members and business owners wishing to pursue or expand upon a variety of permanent and temporary business ventures. Each amendment has been evaluated to ensure that the goals and objectives of the City Council, the UDO, and other technical requirements necessary to satisfy life safety standards have not been compromised.

- 1. 50% Cost of Renovation Standard** - A number of business owners have expressed concern over a UDO requirement that relates to building renovation projects. Currently the ordinance requires a site to come into compliance with the development standards of article XI (parking, loading, landscaping, buffering, open space, traffic management and sidewalks) when the proposed cost of a renovation to an existing structure exceeds 50% of the tax assessed value of the building. Some developers/property owners feel that this requirement discourages renovation and improvement to existing

structures, particularly for those improvements that may be considered necessary for maintenance and that would not contribute significantly to the value of the structure over time.

**Intent:** The intent of this requirement is to provide a standard threshold for requiring non-conforming sites to be brought into compliance with the design and technical standards of the UDO.

**Proposal:** Raise the threshold for the cost of renovation amount from 50% to 75% of the tax assessed value of the building; and add a definition for *Renovation Costs* to provide clarification as to the type of construction improvements that are to be included when determining when a project must comply with this standard.

**Relevant Code Sections:** 7-11-1(3) - General; 7-11-3(1)d. – Landscape Buffering Standards, 7-11-8(b)(4) – Sidewalks, 7-11-9(b)(2) – Emergency Wireless Communications, 7-5-9(c)(1)e. – Level One Site Plan Review Process, 7-17-2(b) – Dimensional Nonconformities, 7-2-5 – Definitions

**Pros:**

- Supports a number of City adopted goals and objectives including: smart growth policies, adaptive reuse, and sustainable development ;
- Brings noncompliant structures into compliance with current building codes which often incorporate enhanced sustainable and green features;
- Responds to the increased costs of construction and materials by reducing some of the financial burden (site improvements) to business owners.

**Cons:**

- Existing nonconforming properties will remain noncompliant until a cumulative threshold of improvements (over a 3 year period) reaches 75 percent;
- May result in a reduction of new public sidewalks and sidewalk connections between existing developments; and
- May delay landscape improvements including: buffers between dissimilar zoning designations, street tree enhancements, and parking lot landscaping.

**Note:** The proposed 75% threshold only applies to article XI (Development and Design Standards) and not to article XII (Environmental Protection Standards). The 50% substantial improvement threshold will remain for properties located in flood hazard areas. This number cannot be adjusted without violating the City's qualification for participation in the federal flood insurance program, which is a FEMA program.

In order for the City of Asheville to qualify for the FEMA program, it must maintain an ordinance that is at least as restrictive as the State's model ordinance. Both the State's model ordinance and the City of Asheville's local ordinance specify a minimum 50% threshold.

2. **Parking Lot Improvements** - Currently the ordinance is unclear and could be interpreted to mean that whenever any existing unpaved parking lot is repaved, or whenever any existing paved lot is demolished and repaved, the entire site must be brought into compliance with article XI (parking, loading, landscaping, buffering, open space, traffic management and sidewalks if applicable).

**Intent:** The intent of this requirement is to provide a standard threshold for requiring non- conforming sites to be brought into compliance with the design and technical standards of the UDO.

**Proposal:** Create a new subsection that addresses partial parking lot improvements for projects that disturb less than 50% of an existing parking field. The new requirement creates standards that allows for an incremental improvement of the parking field that is determined by the location and amount of land disturbance occurring on site.

**Pros:**

- Provides clarity to existing standards by creating a separate set of standards that address partial parking lot improvements;
- Allows for incremental improvements to parking fields versus full site compliance, ultimately reducing the financial burden to businesses wishing to improve and enhance existing noncompliant parking lots; and
- Encourages redevelopment of unimproved parking areas that would otherwise not be improved due to the cost of exterior site enhancements.

**Cons:**

- Will allow extended delay in compliance with applicable UDO standards for sites that are currently deemed



nonconforming.

**Relevant Code Sections:** Section 7-11-1- General and Section 7-11-3(b)(1) – Landscape and Buffering Standards, Applicability

**Note:** As part of this amendment staff has proposed to eliminate duplicate references regarding the types of development projects that require full site compliance. The ordinance places all the applicable standards into one location at the beginning of article XI. Additionally, while evaluating sections of the UDO to be amended in order to reflect the above proposals (items 1 and 2) staff discovered that several sections in article XI referencing sections in article XVII had been omitted in error as part of a prior code amendment. As a result staff has restored those sections to their appropriate location (referenced below).

**Relevant Code Sections:** 7-17-2(c) and 7-17-3(c) concerning “overcoming presumption of cessation of use.”

3. **Temporary Uses** – The current ordinance provisions addressing temporary uses and structures are difficult to administer due to provisions that are incomplete and/or unclear. Additionally, the current regulations are often limiting to those wanting to set up temporary uses as a means of generating income. The Planning and Development Department is seeing increased interest in the establishment of temporary uses in recent months, which are likely related to current economic conditions. The proposed ordinance revision will provide a means of allowing for more temporary uses while clarifying the requirements for such uses.

**Intent:** The intent of this ordinance revision is to allow more temporary uses and clarify requirements for such uses.

**Proposal:** The ordinance completely revises the section of the UDO addressing temporary uses and structures. It divides temporary uses into those that require obtaining a permit and those that must meet standards but do not have to go through the process of obtaining a permit. The draft provides for a more comprehensive listing of temporary use situations and allows temporary uses to be located on vacant lots as appropriate. The ordinance provides regulations for signs for temporary uses and allows factory fabricated buildings to be used for institutional uses other than schools.

**Pros:**

- Provides clarity to standards for temporary uses;
- Allows more temporary uses to be established without a permit;
- Expands opportunities and time allowances for temporary uses; and
- Simplifies the regulation of temporary uses.

**Cons:**

- May delay permanent development of vacant parcels that are revenue generating.

These proposals were shared with the Coalition of Asheville Neighborhoods (CAN) at their meeting on July 13, 2009. Some expressed concerns with item #1 (*50% Cost of Renovation Standard*) and asked for clarification as to how the cost of a renovation project (provided by the applicant) is verified. The Building Safety Department evaluates construction costs using generally accepted construction cost estimating practices that includes a staff verification that the application cost provided by the application meets or exceeds the International Code Council's square foot construction costs.

On Wednesday, September 2, 2009, the Planning and Zoning Commission reviewed the proposals and recommended approval of all three amendments by a unanimous vote (6-0).

Collectively, these amendments may encourage some additional or small scale development or redevelopment without increasing a need for service. Fiscal benefits include those typically associated with new development or redevelopment but actual benefits cannot be predicted.

City staff recommends approval of the code amendments as proposed.

Mayor Bellamy closed the public hearing at 6:29 p.m.

At the request of Vice-Mayor Davis, and with the consensus of Council, City Manager Jackson was directed to revisit landscaping requirements in parking lots.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3791 (site compliance requirements: building renovation costs and partial parking lot improvements). This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

Councilman Mumpower moved for the adoption of Ordinance No. 3792 (temporary uses and structures). This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

**C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES**

**ORDINANCE NO. 3793 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE A SEPARATION REQUIREMENT FOR FAMILY CARE HOMES**

Mayor Bellamy opened the public hearing at 6:36 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to refine the City's existing standards for family care homes, along with the consideration of a new requirement that would require a minimum distance between family care homes and between group homes and family care homes. This public hearing was advertised on September 11 and 18, 2009.

While this amendment is simple in its form it required a fair amount of research. Particularly challenging was understanding the relationship, or more often, the lack of relationship between the State's social services system and State statutes and our local ordinances. Contributing to this confusion is the Federal laws that address discriminatory practices against special populations. She then summarized what we have come to understand:

- The Federal Fair Housing Act defines "disability" as any physical or mental impairment that substantially limits one or more major life activities. This ends up including a host of impairments including those recovering from substance abuse.
- The NC State statutes also defines "person with disabilities" as someone who suffers from a temporary physical, emotional, or mental disability including but not limited to .... This definition does not specifically identify persons recovering from substance abuse as does the Federal definition; however, it does not exclude it either.
- The State and the City of Asheville include definitions of family care homes defined as a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment resident persons with disabilities. The state allows a cap on the number of residents but Asheville has not included a cap in the past.
- The Federal Fair Housing Act and our State Statutes establishes that family care homes are considered a residential use and they shall be a permissible use in all residential districts of all political subdivisions and that it is illegal to discriminate against them or prohibit them in residential districts. This includes homes designed to support those individuals who are in recovery programs, provided they meet all the other requirements.

What the State statute does allow is for local ordinances to require a separation between family care homes. Asheville has not previously taken advantage of this option; however, we are beginning to experience some community issues in association with the clustering of these homes that we feel it is worth considering.

- The state statute allows up to a ½ mile separation (which is 2,640 feet) which we felt was quite large and would likely render a number of the existing homes as being non-conforming. As an alternative, we are proposing a 600 foot separation which is what is currently required between group homes. It seemed to serve us well for Group Homes so we thought it appropriate for family care homes as well where the intensity of activity is usually not as significant. As a point of reference, in an average urban neighborhood, 600 feet is about 10-12 lots away from the subject property.
- Also included in this amendment is a revised definition of family care homes which is proposed to be broader and include homes in Asheville that had previously escaped classification as family care homes.
- The easiest way to separate family care homes from other residential applications is to identify them as a Use by Right,

subject to special requirements. However, all Use by Right applications are limited in respect to being able to obtain variances. They simply are not eligible for variances, so we are also including an exception that would allow family care homes to receive a variance similar to any other residential structure; however, variances to the separation requirements may not be considered unless there is significant land forms that separate the homes.

- We've also added a standard to require a separation between family care homes and group homes since they have similar impacts.
- We have taken this opportunity to clarify a parking standard that had been addressed through a long-standing interpretation. They clarified that they are not allowing parking in any setbacks and they expect the parking to be typical of what occurs in a normal residential district.

This action complies with the City Council Strategic Operating Plan in that it provides for the long-term stability and *sustainability* of a neighborhood by maintaining a controlled amount of housing for a select population while preserving (often *affordable*) housing opportunities for working families. Lastly, maintaining the integrity of a residential neighborhood has been commonly linked to providing a stable and *safe* family environment.

Identifying either a need for an increase in the supply or, the need for controlling the proliferation of family care homes in residential neighborhoods, is not specifically identified in other adopted plans; however, the Asheville City Development Plan 2025 places value on the preservation of the character of our existing neighborhoods.

The Planning & Zoning Commission initially reviewed this amendment at their July 23, 2009, meeting where the amendment received support by a vote of 4-1. Additional information was received by the staff after the meeting, and rather than proceeding directly to City Council for consideration, staff felt it valuable to further refine the proposal, which returned to the Commission's September 2, 2009, meeting. The revised proposal, with certain modifications, was approved 6-0.

Pros:

- Limits destabilization of neighborhoods that are typically more vulnerable – may help control resident turnover.
- Maintains housing stock for working families.
- Provides more flexibility and options than what can be exercised under state statute.

Cons:

- Reduces the flexibility and opportunity for establishing new housing for a protected class of citizens.

City staff recommends that City Council adopt the ordinance adding a separation requirement along with the other adjustments to the existing standards.

The following individuals spoke in support of the ordinance amendment, particularly the separation requirement, primarily due to the saturation of group homes in the area of Broad Street and Madison and parking:

Ms. Lisa Lore  
Mr. Heath Moody  
Ms. Jennifer Lapidus  
Mr. James Fisher  
Mr. Alan Ditmore

Mayor Bellamy closed the public hearing at 6:57 p.m.

There was a brief discussion, initiated by Councilman Mumpower, regarding whether a 600 feet separation is adequate.

City Attorney Oast pointed out that one of the responsibilities that we have as a community is to ensure the availability of housing for people who don't have the same options as everyone else does. Although there are separation requirements as far as ½ mile, one of the things that 600 feet separation does is to ensure they are not adjacent uses, but yet the houses do remain relatively available for accommodations for people with disabilities.

In response to Councilwoman Cape regarding parking, Ms. Tuch explained that for family care homes we can only require what we would normally require for a single-family home or any other residential unit.

Ms. Tuch explained to Councilwoman Cape what would happen if a group home is sold.

In response to Councilman Miller, Ms. Tuch said that any sale or pending sale would fall under this new ordinance, if adopted.

Mayor Bellamy asked that staff provide Council with a memorandum or e-mail, not on the agenda, on this issue in six months to see the number of applications or violations.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3793. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 25 – PAGE**

At 7:07 p.m., Mayor Bellamy announced a short recess.

#### **D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ADDITIONAL USES TO THE INDUSTRIAL AND LIGHT INDUSTRIAL ZONING DISTRICTS**

#### **ORDINANCE NO. 3794 – ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO ADD ADDITIONAL USES TO THE INDUSTRIAL AND LIGHT INDUSTRIAL ZONING DISTRICTS**

Mayor Bellamy opened the public hearing at 7:28 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an amendment to the Unified Development Ordinance to add additional uses to the Industrial and Light Industrial Zoning Districts. This public hearing was advertised on September 11 and 18, 2009.

Since 2005 there have been five separate rezonings of industrially zoned land in the City's zoning jurisdiction. These rezonings led to conversations with the Council, and the Council's Planning and Economic Development (PED) Committee regarding the status of the City's industrially zoned land. The PED members asked the staff to evaluate these rezoning and make recommendations regarding these zones if warranted. An evaluation of these rezonings revealed that the circumstances of the requests were distinct and unique. The following is a brief summary of the five separate rezonings:

- On October 12, 2005, City Council voted to approve a rezoning of roughly 31 acres off of Dogwood Road in Candler from Industrial to RS4 requested by the property owner in order to sell the property to a prospective residential developer. In this instance, staff didn't see a compelling case for the rezoning and had recommended denial.
- On May 23, 2006, City Council voted to approve a rezoning of approximately 1.5 acres of land at 1301 Sand Hill Road from Industrial to Community Business II. This small rezoning was to allow a credit union that had existed at the American Enka/BASF/Colbond plant for many years to be upgraded and brought into compliance.
- On July 10, 2007, City Council approved a rezoning of approximately 37 acres from Industrial to RM16 for an area on the eastern edge of the Biltmore Lake community. Analysis of this area showed that the challenging terrain, presence of streams, power lines, and limited access made it poorly suited for an industrial tenant.
- On January 13, 2009, City Council approved a rezoning of approximately 178 acres on the American Enka/BASF/Colbond site from Industrial to Commercial Industrial (a zone with a broader mix of uses allowed). The collective decision was that this large former industrial site stood a better chance at rehabilitation and reuse if a mix of industrial, office, retail, and medical uses was made available to developers.
- On June 23, 2009, City Council approved a rezoning of approximately 23 acres from Industrial to Commercial Industrial at the former Square D site to accommodate a series of new tenants. In this case, an adjustment of the Industrial zoning district to allow larger fractions of a site to be used for office or retail, or adding call centers as a permitted use might have prevented the request for a rezoning, although this site is no longer ideally located for heavy industry given its location removed from a major highway.

In all of these instances, the staff report noted that the City's Comprehensive plan and the Lockwood-Green economic report recommend preserving industrially zoned property for industrial uses and to resist rezoning (downzoning) efforts; however, all five requests were ultimately granted for the rational reasons noted. But the zoning changes have raised questions about the land use goal of preserving industrially zoned properties. These concerns were discussed by the Council during the hearing on June

23<sup>rd</sup> and were examined in more detail at the meeting of the Planning & Economic Development Committee (PED) on August 12, 2009.

In answer to the expressed concerns, both during the hearing and again during the PED Committee meeting, the staff recommended preserving the land use goal of retaining industrially zoned land but adding some additional flexibility to the uses allowed in the Industrial and Commercial Industrial zoning districts. The staff believes that adding this flexibility will reduce the need for similar requests in the future.

In summary, this amendment proposes to add a limited amount of office and retail uses to both Industrial and Light Industrial Districts. The proposal, if adopted, would allow up to 20% of a building in the Industrial zoning district to be used for office and up to 10% of the building for retail. The allowances are higher in the Light Industrial zoning districts with up to 20% to be used for retail and up to 50% for office.

The staff recommends adding some office and service uses (to support the employees of the industrial sites) along with other limited office uses; limited retail; call centers and concrete plants. She then explained in detail the thought process that staff used to recommend the additional of concrete plants.

This action complies with the City Council Strategic Operating Plan in that it supports the goal of *sustainability* by preserving opportunities (land inventory) for new industrial uses while encouraging some adaptive re-use by offering additional flexibility in uses not formerly available. In addition, this action complies with the Asheville City Development Plan 2025 (Comprehensive Plan) by retaining the land use goal of preserving industrially zoned properties.

This proposal was reviewed by the Planning & Zoning Commission at their September 2, 2009, meeting where the item was supported unanimously by a vote of 6-0.

Pros:

- Preserves the opportunity for new (cleaner, green) industrial uses
- Allows for more flexibility within the current zoning classifications to encourage adaptive re-use and a range or mix of uses

Con:

- --Does not address all the circumstances and trends identified in the five recent rezonings

There is no direct fiscal impact, however, preserving manufacturing and other industrial opportunities supports a sound local economy.

City staff recommends City Council adopt the amendment to the UDO to add uses to the Industrial and Light Industrial zoning classifications.

The following individuals spoke in support of adding concrete plants to the proposed ordinance:

Mr. Tony Hauser, Civil Engineer

Mr. Dan March, representing Environmental Services Inc. (presented Council with information developed by the WNC Alliance with responses by American Concrete)

Mr. Alan Ditmore suggested there be no limit on the percentages for retail and office uses.

At 7:43 p.m., Mayor Bellamy closed the public hearing.

Vice-Mayor Davis said that Buncombe County has a local responsible agency of the WNC Regional Air Quality Agency that permits and monitors facilities such as this.

Ms. Tuch responded to Councilwoman Cape regarding the locations of the Industrial and Light Industrial districts are located in the City.

Councilwoman Cape said that we need a balance of property and opportunities for people in the community.

Councilman Miller supported products like concrete plants being more accessible within the City of Asheville for economic reasons.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Mumpower moved for the adoption of Ordinance No. 3794. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**ORDINANCE BOOK NO. 25 - PAGE**

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 3795 - ORDINANCE PROHIBITING THE TETHERING OF DOGS WITHIN THE CITY LIMITS**

Assistant City Attorney Curt Euler said that this is the consideration of an ordinance prohibiting the tethering of dogs within the City limits.

On Tuesday April 28, 2009, the City Council adopted a revised animal control ordinance. On May 26, 2009, the City Council held further hearing regarding the prohibition of tethering dogs within the City Limits. At the May 26, 2009, hearing, Council directed staff to work with ChainFree Asheville develop an ordinance for consideration.

Tethering is the practice of securing a dog by chain, rope or other material to a tree, house, stake, garage or other structure. Tethering by definition does not include walking a dog on a leash. Many communities in North Carolina have recently adopted ordinances which limit or prohibit a person from leaving a dog unattended and tethered on private property. Many experts have stated that the practice of tethering dogs create dogs with behavioral problems which in turn generate public safety issues for the local government. None of the recognized animal welfare organizations recommend the practice of tethering.

Based on Council's direction from the May 26, 2009, meeting, staff met with Chain Free Asheville, as well as researched ordinances from other jurisdictions within North Carolina, and developed a proposed ordinance which prohibits the tethering of dogs within the City limits. The current animal control ordinance prohibits the tethering of dogs on public property. The proposed ordinance prohibits unattended tethering of dogs on private property within the City limits. The ordinance does allow an owner to tether their dog if the owner is within visual range of the dog.

ChainFree Asheville, a local non-profit, has a program in place whereby Asheville residents with chained dogs can apply to have a fence built for them. This program provides fencing materials and/or labor to persons based on need. Currently, ChainFree Asheville has financial resources of \$30,000 to be used to help build fences and educate citizens during the educational period.

This action complies with the City Council Strategic Operating Plan in the focus area of "Safe."

**Pros:**

- Eliminates the risk of a dog being injured by getting tangled in its tether.
- The City will be promoting a preferred practice in animal care.
- The prohibition may discourage persons from getting a dog when the persons are not prepared for the responsibilities associated with securing the dog on one's property.
- Improved quality of life for the dog.
- Improved public safety.

**Cons:**

- Adopting a tethering ban would increase calls for service and need for additional staffing.
- The prohibition of tethering may adversely effect low income citizens and place financial burden on citizens to erect fences to confine their dogs.
- A person may allow his or her dog to roam freely on the person's property as opposed to building a fence thereby creating more at large dog calls for service.
- Persons may surrender their dogs to the animal shelter because of the increase costs of securing one's dog on his or her property through fencing or purchasing an invisible fence system.

If City Council decides to adopt an ordinance prohibiting the tethering of dogs on private property, from an operational standpoint, staff recommends the following: (1) Do not begin issuing citations for violations until January 1, 2011, in order to properly educate the public and give persons an opportunity to prepare for the new restrictions; (2) Adopt a total prohibition on unattended tethering at all times on private property. Allowing a dog to be tethered unattended for a certain number of hours per twenty-four hours period would be virtually impossible to enforce in that staff has no adequate way to determine when a dog was

first placed on a tether; and (3) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property).

Ms. Peggy Irwin, Founder of ChainFree Asheville, recapped the reasons for law in that the chained dog in any city represents (1) A threat to the public safety, esp. children; (2) A public nuisance – diminishing property values and tourism; (3) Visual evidence of irresponsible pet ownership; and (4) Tolerance of inhumane treatment.

Advantages of the new ordinance include (1) The ordinance addresses all the reasons for the law; (2) The ordinance represents the combined input of Staff and concerned citizens; (3) Logic based on experiences of tethering laws in 26 jurisdictions in the South; (4) Attended tethering is allowed and defined as "a responsible party outside with the dog." And (5) Allows for a 15 month educational period.

She addressed Councilman Newman's motion on May 26: (1) "To move forward with a policy of the prohibition of 24/7 unattended tethering (with perhaps a secondary motion on the other period of time when the person responsible for the dog is present)" - The ordinance before you moves Asheville forward with a policy of prohibiting 24/7 tethering; (2) ". . ." "That there is a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component." - We have been working with Atlanta's anti-chaining program administrator. Elements of their plan would work here. We would be assisting in whatever way possible to effect this education; (3) ". . ." "To support creating a fund using private dollars raised by people in the community who care about this issue to be used once we move into Phase Two (enforcement phase) to assist people to comply with the law achieve compliance with the ordinance." - The fund already exists and is being used, and will continue to be used, to assist low-income individuals and families with removing their dog from the chain and fence building; (4) ". . ." "To make execution entering into Phase Two contingent upon the creation of this community fund. - We are actively fundraising in a variety of ways including obtaining grants, online donations, special events, and have an experienced fund-raising team in place; and (5) ". . ." "To direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund. " - In a meeting with Councilman Newman over the summer, we agreed that we need to build about 100 fences at \$300 each. So a fund of \$30,000 is the goal. We are giving you every assurance that this is achievable.

Mr. Alan Ditmore expressed concern over people who visit with their dog and can't allow them to be tethered while the owner is visiting. He also was concerned about when the ChainFree Asheville fence money runs out the law will still be in effect.

The Director of Operations for the Asheville Humane Society supported prohibiting unattended tethering.

When Councilwoman Cape questioned if the ChainFree fences are allowed in all zoning districts, City Attorney Oast felt there were no restrictions on fences other than barbed wire fences, but there may be some neighborhoods that have restrictive covenants. Councilman Russell noted that chain link fences are not allowed in several subdivisions, particularly in North Asheville, and there are several other neighborhoods that have very strict fencing requirements, not only size, but how far they have to set, etc.

Councilman Mumpower understood the concern but we keep adding more and more rules to regulate behavior. He felt that this ordinance represents a distraction of efforts to eliminate the open air drug market. He also felt this is an incremental intrusion on the civil liberties of our people.

Councilman Newman struggled with the total prohibition of unattended tethering as we don't want to allow animal cruelty; however, he didn't feel that tethering a dog for a short period of time was unacceptable, understanding the unenforceability of the short tethering.

Upon inquiry of Mayor Bellamy, Mr. Euler said that we do not have anyway to mandate that the non-profit be able to fund and build fences. We struggled with how to make the ordinance contingent on a non-profit's ability to pay for fences. We basically concluded that they have raised enough money to get through the period where people need help. We are basically recommending passage of this ordinance but not based on ChainFree Asheville's ability to pay and build the fences.

After Mayor Bellamy stressed that the City must be the leader in education, she asked about funds for the educational component. Mr. Euler explained that during the grace period animal control officers will be talking with residents one on one to let them know they will need an alternate way to secure their dogs. Staff, along with ChainFree Asheville, will do public service announcements on the City's channel, along with distribution of educational brochures. Police Chief Hogan explained how the Police Department will gear up for a complete education process. Mayor Bellamy suggested placing information on the City's website. Councilwoman Cape suggested putting a flyer with the information sent out for renewal of dog licenses.

It was the consensus of Council to have staff develop an educational program and present it to the Public Safety Committee for review.

Mayor Bellamy said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Miller moved for the adoption of Ordinance No. 3795, an ordinance prohibiting the tethering of dogs on private property, with the following conditions: (1) Do not begin issuing citations for violations until January 1, 2011, in order to properly educate the public and give persons an opportunity to prepare for the new restrictions; (2) Adopt a total prohibition on unattended tethering at all times on private property; and (3) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property). This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no".

## **ORDINANCE BOOK NO. 25 - PAGE**

### **VI. NEW BUSINESS:**

#### **A. RESOLUTION NO. 09-212 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH BUNCOMBE COUNTY FOR THE OPERATION OF A CONSOLIDATED 911 COMMUNICATIONS CENTER**

Assistant City Attorney Curt Euler said that this is the consideration of a resolution authorizing the Mayor to enter into an interlocal agreement with Buncombe County for the operation of a Consolidated 911 Communications Center.

On September 2, 2003, the City and County entered into an interlocal agreement regarding the construction of a consolidated 911 communication center (herein "Communication Center"). The purpose of the Communication Center was to have all public safety agencies in Buncombe County under one roof in order to improve response times for calls for service. In exchange for the City forgoing its ability to become a Public Safety Answering Point (herein "PSAP"), the County was to construct a Communications Center for the City, County and Sheriff's Department to receive calls and dispatch public safety services within Buncombe County and pay for all associated equipment necessary for receiving and dispatching calls for service. Buncombe County has completed the construction of the Communications Center and purchased the necessary equipment. Prior to the City moving into the Communication Center, pursuant to Section II.M and Section III.E of the 2003 Agreement, both the City and County are to execute a joint agreement for the operation of the Communications Center.

Mr. Euler provided Council with the following historical timeline regarding this agreement: 2001 – APD investigates becoming its own Public Safety Answering Point ("PSAP"); 2003 – (1) APD presents recommendation/plan to City Council at Annual Retreat; (2) Buncombe County proposes an Interlocal Agreement to co-locate a joint communications center at the County's expense; and (3) City/County Interlocal Agreement executed September 2, 2003; 2005 - City Council extends completion date of joint center to January, 2007 to avoid breach of contract; 2007 - June: NC General Assembly revises Public Safety Telephone Service & Wireless Telephone Service Act; 2008 - City & County continue negotiations regarding joint operating agreement; 2008 (July) - Center construction completed; county functions brought on-line 2009 – (1) City/County Operational Agreement negotiations continue; (2) June 2, 2009 - County Commissioners disapprove joint operational agreement: Ask to reconsider Termination Clause; (3) July 7, 2009 – City Council members and County Commissions plus staff meet to discuss the proposed agreement; (4) August 2009 - The Staff of both parties reach a tentative agreement subject to approval by both governing bodies; (5) September, 2009 – Buncombe County submits an application for City to become the backup PSAP for Buncombe County; (6) September 15, 2009 – Buncombe County approves the execution of the operational agreement; and (7) September 22, 2009 – Issue before Council.

Highlights of the agreement consist of (1) Establishing the City as the backup PSAP for Buncombe County; (2) The creation of an advisory board to develop procedures and practices for the Communication Center, make capital expenditure recommendations and to handle disputes; and (3) A termination clause which insures the City a revenue stream to fund the costs associated with the receiving of 911 calls for service should the arrangement with Buncombe County end.

Highlights of the Agreement include:

- The creation of an advisory board consisting of the Sheriff, Emergency Management Director, Fire Chief and Police Chief of the City of Asheville and the President of the Buncombe County Fire Chief's Association to develop procedures and practices for the operation, make capital expenditure recommendations and to handle disputes.
- Establishing the City of Asheville's call center located in the Municipal Building and the Backup PSAP for Buncombe County.
- A termination clause which insures the City a revenue stream to fund the costs associated with the receiving of 911 calls for service should the arrangement with Buncombe County end.



On September 15, 2009, the Buncombe County Board of Commissioners approved the execution of the proposed operating agreement for the Communication Center and Buncombe County has submitted its application to make the City's call center in the Municipal Building the backup PSAP for Buncombe County.

This action complies with the City Council Strategic Operating Plan in the focus area of "Safe."

Pros:

- Having all the Asheville Police Department, Asheville Fire and Rescue, the Buncombe County Emergency Medical Service, and the Buncombe County Sheriff's Department under one roof to receive and dispatch calls for service.
- Having an advisor body consisting of all stakeholders to meet and discuss issues facing the Consolidated Call Center.
- The ability to have an orderly termination of the agreement in the event that either party determines that the agreement is not meeting the needs of the citizens that it serves.
- A continued revenue source for the funding of receiving 911 calls for service by the Police and Fire Departments should the agreement be terminated.

Cons:

- None noted.

Starting July 1, 2009, the City will reimburse the County for the salaries of three (3) telecommunicator positions for the County's continued dispatching of Asheville Fire and Rescue. The City will not have to pay for infrastructure and equipment used for dispatching public safety, except for radio systems outside the Communications Center.

City staff recommends City Council adopt this resolution giving the Mayor authority to enter into an agreement for the operation of the Consolidated 911 Communications Center with Buncombe County.

On behalf of Council, Mayor Bellamy thanked former Councilman Joe Dunn, Councilman Mumpower, City Attorney Curt Euler, City Manager Gary Jackson, Assistant City Manager Jeff Richardson, Police Chief Hogan, former Fire Chief Greg Grayson, Interim Fire Chief Scott Burnette, Information Technologies Director Jonathan Feldman, Police Capt. Darryl Fisher, Woodfin Mayor Jerry Vehaun, and Buncombe County personnel of Wanda Greene, the County's technical staff, the County Attorney's Office, and former County Commissioner Nathan Ramsey for their work on this real success story of intergovernmental collaboration.

Mr. Euler responded to Councilwoman Cape and Councilman Miller in how the existing call center is the back-up.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-212. This motion was seconded by Vice-Mayor Davis and carried unanimously.

## **RESOLUTION BOOK NO. 32 – PAGE 230**

### **B. DISCUSSION OF CITY STANDARDS REGULATING SIGNS ON VEHICLES**

Assistant Planning & Development Director Shannon Tuch said that City Council was recently contacted by business owners expressing concern over the City's application and enforcement of standards regulating signs on vehicles. This occurred while the City Attorney's office was in the process of seeking resolution to an on-going enforcement matter involving signs on vehicles and was asked to suspend any further action until Council had the opportunity to publicly review and discuss those standards.

On September 9, 2009, staff reviewed the current ordinance and enforcement program with the Planning & Economic Development Committee. The Planning Department is charged with enforcing these standards and generally takes a conservative approach to their application to allow for an appropriate level of business identification. Enforcement of egregious violations is taken when other businesses are adversely impacted or other city goals are compromised. The presentation and accompanying

staff commentary will attempt to:

- Demonstrate when and under what circumstances enforcement actions are necessary,
- Explain the relationship between signs on vehicles and other sign standards, and
- Identify options available to businesses requiring additional identification

Ms. Tuch then provided background on the existing regulations and how they are enforced. She said that the Sign Code has 4 categories for signage: (1) Signs exempt from regulation; (2) Signs exempt from permit requirements; (3) Prohibited signs; and (4) Signs requiring permits (on –premise, off-premise).

Signs on vehicles use to be listed as “prohibited” but provided an exception for signs used to identify businesses. Staff moved this standard to being “exempt from permit requirements” during a housekeeping amendment in 2008.

She said that the application of the standard can be challenging. Staff had asked to qualify the time period during which a vehicle could remain stationary but Council expressed concern so the language remained unchanged.

Section 7-13-2(d)(12) reads: *Business signs on vehicles*. Signs displaying a business name, trademark, or other identifier shall be allowed provided they are moved periodically during the normal course of business and maintain a current and valid registration and inspection. When not in use, said vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties.

There are areas of subjectivity: (1) “provided they are moved periodically during the normal course of business”, and (2) “vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties”

How To Address the Subjectivity – develop basic guidelines: (1) Check to see that business is being conducted on the property. Monitor to see that vehicle moves within a reasonable time frame; (2) Check to see whether the vehicle is located on the business property itself; (3) Verify that vehicle is operable and has a valid license and registration; and (4) Speak to business owner to understand whether there are opportunities to move the vehicle to an appropriate, yet convenient location.

What this generally means is: (1) Signs on vehicles are not a high priority enforcement matter and enforcement is generally reserved for the most egregious violations or chronic problem areas; (2) Most notices issued are the result of complaints and most complaints are from competing businesses; (3) Most matters are resolved with a basic contact without notices being issued; and (4) Some violations include numerous violations and signs on vehicles may be listed as one.

This has resulted in some general guidelines: (1) Signs on vehicles are not a high priority enforcement matter and enforcement is generally reserved for the most egregious violations or chronic problem areas; (2) Most notices issued are the result of complaints and most complaints are from competing businesses; (3) Most matters are resolved with a basic contact without notices being issued; and (4) Some violations include numerous violations and signs on vehicles may be listed as one.

She then showed a variety of photos showing signs that are permitted and those that are prohibited.

Ms. Tuch responded to various questions/comments from Council, some being, but are not limited to: why would there be a violation if the truck has authority to park on the property by the property owner; how are promotional events handled; need to be clear (no subjectivity) on “vehicles are to be parked in such manner so as to minimize their visibility from the street and other public properties”; and suggestion for language that trucks don’t obstruct other signs.

Mr. Tuch said that she would look at all the points raised by Council.

**C. RESOLUTION NO. 09-213 – RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY A UTILITY EASEMENT TO PROGRESS ENERGY FOR THE RELOCATION OF THE OAKVIEW BRIDGE PROJECT**

Mr. Greg Shuler, Engineering Services Manager said that this is the consideration of a resolution authorizing the City Manager to convey a utility easement to Progress Energy to facilitate the construction and replacement of the East Oakview Bridge.

Several years ago, the East Oakview Bridge located in West Asheville on E. Oakview Road collapsed. The City requested and the N.C. Dept. of Transportation (NCDOT) agreed to loan to the City a temporary replacement bridge until the City could replace the bridge. Since that time, the City has secured the needed funding, approximately \$1.18 Million, to replace the bridge. The Federal Highway Administration will fund 80% of the replacement and the City is responsible for the remaining 20%.

The temporary bridge is one of only two within the State of North Carolina and NCDOT has requested that the City expedite its replacement project and return the temporary bridge. The City has acquired most of the needed right of way to replace the bridge. In order to replace the bridge, Progress Energy will first need to relocate and install certain utility lines across the City's right of way.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by addressing the City's aging infrastructure.

Pros:

- Allows for the relocation of utility poles and lines that are required to construct the new bridge.
- Expedites the return of the temporary bridge to the NCDOT.

Con:

- A utility easement will now be on City-owned property.

There is no direct fiscal impact for the utility easement; however, the City will be responsible for 20% of the amount to actually relocate the utility pole and lines. The total estimated amount is \$10,200.16. The City will pay this amount initially, then request reimbursement from the NCDOT for 80%. The total amount that the City will be responsible for is estimated to be \$2,040.03.

City staff recommends City Council adopt a resolution authorizing the City Manager to convey an easement across public right-of-way to Progress Energy.

In response to Mayor Bellamy, Mr. Shuler said that we have executed a municipal agreement with NCDOT and feel confident they will reimburse the City the 80%.

In response to Mayor Bellamy, Director of Public Works Cathy Ball said that we have a project budget for this project which has been approved.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-213. This motion was seconded by Councilman Mumpower and carried unanimously.

## **RESOLUTION BOOK NO. 32 – PAGE 231**

### **D. PEOPLE FRIENDLY DRUG DOG PROGRAM IN PUBLIC PARKS AND DOWNTOWN AREAS**

Councilman Mumpower said that his proposal was considered by the Public Safety Committee and wanted to make sure that Council was aware of his proposal. He proposed the use of people friendly drug dogs in our parks, parking garages, and other downtown areas where drugs are sold and abused in public spaces. The proposal could be titled "Bennie the Beagle" Drug Dog Program.

The problem is that our downtown is a concentrated area for drug distribution and use in public spaces – including our parks and garages. There is a new Pack Square public park coming that has the potential to be an additional large scale incubator for drug activity and related crimes.

His proposal is instruct our Police Department to intensify enforcement/education efforts in our downtown through the routine use of a people friendly drug intervention dog in public spaces.

Methods include (1) High visibility routine patrol utilizing an officer and canine with good people skills; (2) Use a seasonal sign on "Bennie the Beagle" with an anti-drug message – i.e. "Asheville is a Drug Free Zone" or "There's a New Dog in Town"; and (3) Deterrence and public education will be the priorities of this effort.

He provided links for additional information on the how and why of using people friendly drug intervention dogs. He was sure our police officers have the necessary know how and creativity.

Vice-Mayor Davis, Chair of the Public Safety Committee, said that the Public Safety Committee reviewed this proposal and determined that this program is not feasible because of the possibility of violating the 4<sup>th</sup> Amendment. Therefore, the Committee did not recommend moving the idea forward.

It was the consensus of Council to instruct the City Clerk to attach the minutes of the particular City Council committee meeting when a Council member brings the action forward to the full Council.

In response to Councilman Miller, a Police Department Officer said that he believed the City has five drug dogs.

## **E. CALENDARS**

### **Remainder of the Year City Council Meeting Schedule**

Mayor Bellamy instituted discussion of the remainder of the year calendar of City Council. After that discussion, it was the consensus of Council to (1) hold the City Council's organizational only on December 8, 2009; (2) hold a regular formal meeting on December 15, 2009; and (3) hold the City Council annual retreat on January 8-9, 2010. The City Clerk was instructed to prepare the proper paperwork and place this item on the October 13, 2009, agenda.

Upon inquiry of Councilman Mumpower, Mayor Bellamy said that there will be a facilitator at the Council retreat and we will do it as economically as possible.

### **Business Calendar for Fiscal Year 2009-10**

City Manager Jackson asked for Council's consideration of adoption of the Business Calendar for Fiscal Year 2009-10. Because there will be an amendment to the calendar due to City Council's retreat, the City Clerk was instructed to place this item on the October 13, 2009, agenda for action.

## **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

## **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 9:32 p.m.

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CITY CLERK

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MAYOR